

ASSEMBLY BILL

No. 2595

Introduced by Assembly Member Baugh

February 23, 1998

An act to amend Section 10232.8 of the Insurance Code, relating to long-term care insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 2595, as introduced, Baugh. Long-term care insurance.

Existing law regulates long-term care insurance. Federal law provides that long-term care insurance that meets certain requirements is subject to favorable income tax treatment. California law requires every insurer that offers federally qualified long-term care insurance to fairly and affirmatively concurrently offer and market long-term care insurance policies that are not federally qualified but that, instead, meet certain state requirements.

Existing law provides that for policies that are intended to be federally qualified, the threshold for eligibility shall be impairment in 2 out of 6 activities of daily living, impairment of cognitive ability, or other criteria if federal law or regulations allow other types of disability to be used. Existing law provides that if federal law or regulations allow other types of disability to be used, the Insurance Commissioner shall adopt emergency regulations to add those other criteria as a 3rd threshold to establish eligibility for benefits. Existing law requires insurers to submit policies for approval within 60 days of the effective date of the regulations.

This bill would provide that insurers shall not be restricted from selling previously approved policies, but shall be required to offer other types of disability if so determined by federal law or regulations, regardless of policy approval from the commissioner. The bill would also require the commissioner to expedite filings submitted under this provision to the best of his or her ability.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 10232.8 of the Insurance Code is
2 amended to read:

3 10232.8. (a) In every long-term care policy or
4 certificate that is not intended to be a federally qualified
5 long-term care insurance contract and provides home
6 care benefits, the threshold establishing eligibility for
7 home care benefits shall be at least as permissive as a
8 provision that the insured will qualify if either one of two
9 criteria are met:

10 (1) Impairment in two out of seven activities of daily
11 living.

12 (2) Impairment of cognitive ability.

13 The policy or certificate may provide for lesser but not
14 greater eligibility criteria. The commissioner, at his or her
15 discretion, may approve other criteria or combinations of
16 criteria to be substituted, if the insurer demonstrates that
17 the interest of the insured is better served.

18 “Activities of daily living” in every policy or certificate
19 that is not intended to be a federally qualified long-term
20 care insurance contract and provides home care benefits
21 shall include eating, bathing, dressing, ambulating,
22 transferring, toileting, and continence; “impairment”
23 means that the insured needs human assistance, or needs
24 continual substantial supervision; and “impairment of
25 cognitive ability” means deterioration or loss of
26 intellectual capacity due to organic mental disease,
27 including Alzheimer’s disease or related illnesses, that



1 requires continual supervision to protect oneself or
2 others.

3 (b) In every long-term care policy approved or
4 certificate issued after the effective date of the act adding
5 this section, that is intended to be a federally qualified
6 long-term care insurance contract as described in
7 subdivision (a) of Section 10232.1, the threshold
8 establishing eligibility for home care benefits shall
9 provide that a chronically ill insured will qualify if either
10 one of two criteria are met or if a third criterion, as
11 provided by this subdivision, is met:

12 (1) Impairment in two out of six activities of daily
13 living.

14 (2) Impairment of cognitive ability.

15 Other criteria shall be used in establishing eligibility for
16 benefits if federal law or regulations allow other types of
17 disability to be used applicable to eligibility for benefits
18 under a long-term care insurance policy. If federal law or
19 regulations allow other types of disability to be used, the
20 commissioner shall promulgate emergency regulations to
21 add ~~such~~ *those* other criteria as a third threshold to
22 establish eligibility for benefits. Insurers shall submit
23 policies for approval within 60 days of the effective date
24 of the regulations. *Insurers shall not be restricted from*
25 *selling previously approved policies, but shall be required*
26 *to offer other types of disability if so determined by*
27 *federal law or regulations, regardless of policy approval*
28 *from the commissioner. The commissioner shall expedite*
29 *filings submitted under this provision to the best of his or*
30 *her ability.* With respect to policies previously approved,
31 the department is authorized to review only the changes
32 made to the policy. All new policies approved and
33 certificates issued after the effective date of the
34 regulation shall include the third criterion. No policy shall
35 be sold that does not include the third criterion after one
36 year beyond the effective date of the regulations. An
37 insured meeting this third criterion shall be eligible for
38 benefits regardless of whether the individual meets the
39 impairment requirements in paragraph (1) or (2)
40 regarding activities of daily living and cognitive ability.

1 (c) A licensed health care practitioner, independent
2 of the insurer, shall certify that the insured meets the
3 definition of “chronically ill individual” as defined under
4 Public Law 104-191. In the event a health care
5 practitioner makes a determination, pursuant to this
6 section, that an insured does not meet the definition of
7 “chronically ill individual,” the insurer shall notify the
8 insured that the insured shall be entitled to a second
9 assessment by a licensed health care practitioner, upon
10 request, who shall personally examine the insured. The
11 requirement for a second assessment shall not apply if the
12 initial assessment was performed by a practitioner who
13 otherwise meets the requirements of this section and who
14 personally examined the insured. The assessments
15 conducted pursuant to this section shall be performed
16 promptly with the certification completed as quickly as
17 possible to ensure that an insured’s benefits are not
18 delayed. The written certification shall be renewed every
19 12 months. A licensed health care practitioner shall
20 develop a written plan of care after personally examining
21 the insured. The costs to have a licensed health care
22 practitioner certify that an insured meets, or continues to
23 meet, the definition of “chronically ill individual,” or to
24 prepare written plans of care shall not count against the
25 lifetime maximum of the policy or certificate. In order to
26 be considered “independent of the insurer,” a licensed
27 health care practitioner shall not be an employee of the
28 insurer and shall not be compensated in any manner that
29 is linked to the outcome of the certification. It is the intent
30 of this section that the practitioner’s assessments be
31 unhindered by financial considerations.

32 (d) “Activities of daily living” in every policy or
33 certificate intended to be a federally qualified long-term
34 care insurance contract as provided by Public Law
35 104-191 shall include eating, bathing, dressing,
36 transferring, toileting, and continence; “impairment in
37 activities of daily living” means the insured needs
38 “substantial assistance” either in the form of “hands-on
39 assistance” or “standby assistance,” due to a loss of
40 functional capacity to perform the activity; “impairment

1 of cognitive ability” means the insured needs substantial
2 supervision due to severe cognitive impairment;
3 “licensed health care practitioner” means a physician,
4 registered nurse, licensed social worker, or other
5 individual whom the Secretary of the United States
6 Department of the Treasury may prescribe by regulation;
7 and “plan of care” means a written description of the
8 insured’s needs and a specification of the type, frequency,
9 and providers of all formal and informal long-term care
10 services required by the insured, and the cost, if any.

11 (e) Until ~~such~~ *the time as* ~~that~~ these definitions may be
12 superseded by federal law or regulation, the terms
13 “substantial assistance,” “hands-on assistance,” “standby
14 assistance,” “severe cognitive impairment,” and
15 “substantial supervision” shall be defined according to
16 the safe-harbor definitions contained in Internal Revenue
17 Service Notice 97-31, issued May 6, 1997.

18 (f) The definitions of “activities of daily living” to be
19 used in policies and certificates that are intended to be
20 federally qualified long-term care insurance shall be the
21 following until the time that these definitions may be
22 superseded by federal law or regulations:

23 (1) Eating, which shall mean feeding oneself by
24 getting food in the body from a receptacle (such as a
25 plate, cup, or table) or by a feeding tube or intravenously.

26 (2) Bathing, which shall mean washing oneself by
27 sponge bath or in either a tub or shower, including the act
28 of getting into or out of a tub or shower.

29 (3) Continence, which shall mean the ability to
30 maintain control of bowel and bladder function; or when
31 unable to maintain control of bowel or bladder function,
32 the ability to perform associated personal hygiene
33 (including caring for a catheter or colostomy bag).

34 (4) Dressing, which shall mean putting on and taking
35 off all items of clothing and any necessary braces,
36 fasteners, or artificial limbs.

37 (5) Toileting, which shall mean getting to and from
38 the toilet, getting on or off the toilet, and performing
39 associated personal hygiene.

1 (6) Transferring, which shall mean the ability to move
2 into or out of bed, a chair or wheelchair.

3 The commissioner may approve the use of definitions
4 of “activities of daily living” that differ from the verbatim
5 definitions of this subdivision if these definitions would
6 result in more policy or certificate holders qualifying for
7 long-term care benefits than would occur by the use of
8 the verbatim definitions of this subdivision. In addition,
9 the following definitions may be used without the
10 approval of the commissioner: (1) the verbatim
11 definitions of eating, bathing, dressing, toileting,
12 transferring, and continence in subdivision (g); or (2) the
13 verbatim definitions of eating, bathing, dressing,
14 toileting, and continence in this subdivision and a
15 substitute, verbatim definition of “transferring” as
16 follows: “transferring,” which shall mean the ability to
17 move into and out of a bed, a chair, or wheelchair, or
18 ability to walk or move around inside or outside the home,
19 regardless of the use of a cane, crutches, or braces.

20 The definitions to be used in policies and certificates for
21 impairment in activities of daily living, “impairment in
22 cognitive ability,” and any third eligibility criterion
23 adopted by regulation pursuant to subdivision (b), shall
24 be the verbatim definitions of these benefit eligibility
25 triggers allowed by federal regulations. In addition to the
26 verbatim definitions, the commissioner may approve
27 additional descriptive language to be added to the
28 definitions, if the additional language is (1) warranted
29 based on federal or state laws, federal or state regulations,
30 or other relevant federal decision, and (2) strictly limited
31 to that language ~~which~~ *that* is necessary to ensure that the
32 definitions required by this section are not misleading to
33 the insured.

34 (g) The definitions of “activities of daily living” to be
35 used verbatim in policies and certificates that are not
36 intended to qualify for favorable tax treatment under
37 Public Law 104-191 shall be the following:

38 (1) Eating, which shall mean reaching for, picking up,
39 and grasping a utensil and cup; getting food on a utensil,
40 and bringing food, utensil, and cup to mouth;



1 manipulating food on plate; and cleaning face and hands
2 as necessary following meals.

3 (2) Bathing, which shall mean cleaning the body using
4 a tub, shower, or sponge bath, including getting a basin
5 of water, managing faucets, getting in and out of tub or
6 shower, and reaching head and body parts for soaping,
7 rinsing, and drying.

8 (3) Dressing, which shall mean putting on, taking off,
9 fastening, and unfastening garments and undergarments
10 and special devices such as back or leg braces, corsets,
11 elastic stockings or garments, and artificial limbs or
12 splints.

13 (4) Toileting, which shall mean getting on and off a
14 toilet or commode and emptying a commode, managing
15 clothing and wiping and cleaning the body after toileting,
16 and using and emptying a bedpan and urinal.

17 (5) Transferring, which shall mean moving from one
18 sitting or lying position to another sitting or lying position;
19 for example, from bed to or from a wheelchair or sofa,
20 coming to a standing position, or repositioning to
21 promote circulation and prevent skin breakdown.

22 (6) Continence, which shall mean the ability to control
23 bowel and bladder as well as use ostomy or catheter
24 receptacles, and apply diapers and disposable barrier
25 pads.

26 (7) Ambulating, which shall mean walking or moving
27 around inside or outside the home regardless of the use
28 of a cane, crutches, or braces.

